

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In re: § **Case No. 15-10109-HCM**
COINTERRA, INC., §
Debtor. § **Chapter 7**

**APPLICATION FOR AUTHORIZATION TO EMPLOY KELL C. MERCER
& KELL C. MERCER, P.C. AS LITIGATION
COUNSEL TO THE TRUSTEE PURSUANT TO 11 U.S.C. § 327(a)**

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE H. CHRISTOPHER MOTT,
UNITED STATES BANKRUPTCY JUDGE:

Randolph N. Osherow, the Chapter 7 Trustee (the “Trustee”) respectfully files this Application for an order authorizing the Trustee to employ Kell C. Mercer and Kell C. Mercer, P.C. (collectively “Mercer”) as Litigation Counsel pursuant to 11 U.S.C. § 327(a) (the “Motion to Employ”). In support of his *Motion to Employ* the Trustee states the following:

JURISDICTION AND PROCEDURAL BACKGROUND

1. On January 24, 2015 (the “Petition Date”), Cointerra, Inc. (“Debtor”) filed a voluntary petition for relief under chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”) in this Court, and the Trustee was appointed.
2. This Court has jurisdiction over this Application pursuant to 28 U.S.C. § 1334. This Court may hear and act upon this Application under 28 U.S.C. § 157. Consideration of this Application is a core proceeding under 28 U.S.C. § 157(b). Venue of this proceeding is

proper in this district under 28 U.S.C. §§ 1408 and 1409.

APPLICATION TO EMPLOY

3. By this Application, the Trustee seeks authorization to retain Mercer as Litigation Counsel pursuant to 327(a) of the Bankruptcy Code to represent the Trustee in the instant bankruptcy case for the following specific tasks: To represent the Trustee in connection with the investigation of and prosecution of avoidance actions under 11 U.S.C. §§ 544, 547, 548 and 550.

4. The Trustee has selected Mercer to perform the services due to Mr. Mercer's experience and knowledge regarding representation of Chapter 7 Trustees in connection with the investigation and prosecution of such matters.

5. The professional services to be rendered and the proposed arrangement for compensation are set forth in Mercer's Disclosure of Compensation attached hereto as Exhibit "A-1." Mercer's customary fees and expenses incurred in connection with this representation are to be paid by the Trustee out of the bankruptcy estate, after approval from the bankruptcy court. Payment of any fees and expenses to Mercer shall be subject to section 330 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and the applicable guidelines of the Office of the United States Trustee.

6. To the best of Trustee's knowledge, except as disclosed in the Verified Statement of Proposed Litigation Counsel filed herewith as Exhibit "B" and incorporated by reference herein for all purposes, Litigation Counsel has no interest adverse to the Debtor or to the Debtor's bankruptcy estate and is disinterested, and Litigation Counsel has no connection with the Debtor, the Debtor's creditors, or any party in interest herein except as disclosed in the Verified Statement of Proposed Litigation Counsel. As noted in the verified Attorney's Disclosure Of Compensation filed herewith as Exhibit "A" and incorporated by

reference herein for all purposes, Litigation Counsel does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed. The Trustee believes that Litigation Counsel's employment is necessary to the orderly administration of the estate and would be in the best interest of this estate.

WHEREFORE, Randolph N. Osherow, Chapter 7 Trustee for the Bankruptcy Estate of Cointerra, Inc. respectfully requests that the Court enter an order (i) approving the retention of Kell C. Mercer and Kell C. Mercer, P.C. as Litigation Counsel pursuant to 11 U.S.C. § 327(a), and (ii) granting the Trustee such other and further relief as is just and proper.

/s/ Randy Osherow
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CHAPTER 7 TRUSTEE

Respectfully submitted,

Kell C. Mercer, P.C.
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By: /s/ Kell C. Mercer
Kell C. Mercer
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PROPOSED ATTORNEYS FOR RANDOLPH N. OSHEROW, THE CHAPTER 7 TRUSTEE

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that on the 10th day of February, 2016, a true and correct copy of the foregoing document was served upon the parties on the attached mailing matrix via electronic means as listed on the Court's ECF noticing system, by email (as indicated on the matrix) or by regular first class mail.

/s/ *Kell C. Mercer*

Kell C. Mercer